

NSC-D/LOS # 357
UNCLASSIFIED
MEMORANDUM

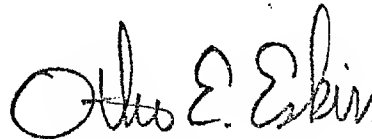
April 24, 1975

TO : Members of the LOS Executive Group
SUBJECT : Geneva LOS Conference Working Drafts

Attached for your information are
two working documents:

1. Single draft on Basic Conditions of
Exploitation and Exploration

~~2. Chairman's draft on the Exclusive
Economic Zone~~



Otho E. Eskin
Staff Director

Attachments:

As stated.

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State Dept. declassification & release instructions on file

BASIC CONDITIONS OF EXPLORATION AND EXPLOITATION

The Authority shall take measures pursuant to this Convention, including the adoption of rules and regulations, to promote and encourage scientific research and the exploration of the Area and the exploitation of its resources and other related activities, and to secure maximum financial and other benefits in accordance with these Basic Conditions. To that end the Authority shall avoid discrimination in the granting of opportunities for such activities and in the implementation of its powers, and ensure that all rights granted pursuant to this Convention are fully safeguarded. Special consideration by the Authority under this Convention for the interests and needs of the developing countries, and particularly the land-locked among them, shall not be deemed to be discrimination.

RIGHTS IN THE AREA AND ITS RESOURCES

1. The Area and its resources being the common heritage of mankind all rights in the resources are vested in the Authority on behalf of mankind as a whole. These resources are not subject to alienation.

RIGHTS IN MINERALS

2. Rights in the minerals or processed metals derived from the Area shall pass from the Authority only in accordance with the provisions of this Convention, the rules and regulations prescribed by the Authority in accordance with this Convention, and the terms and conditions of the relevant contracts, joint ventures or other form of association entered into by it.

ACCESS TO THE AREA AND ITS RESOURCES

3. The Authority shall from time to time determine the part or parts of the Area in which the exploration of the Area and the exploitation of its resources and other related activities may be conducted. In doing so the Authority shall be guided by the following principles:

(a) The Authority shall encourage the widest possible conduct of general survey operations, and to that end shall each year, after consultation with all Contracting States, open for general survey such broad oceanic areas as are determined by it to be of interest for this purpose.

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(b) The Authority may, upon the proposal of a Contracting State or on its own initiative, open for evaluation and exploitation broad oceanic areas determined by it on the basis of sufficient supporting data, to be of commercial interest;

(c) The Authority shall periodically determine the part or parts of the Area in which Contracting States or the Authority by itself or by other means it may determine may carry out activities in accordance with this Convention. The ratio of the part or parts of the Area to be open for activities by Contracting States to the part or parts of the Area open to activities by the Authority directly or by other means it may determine, shall be;

(d) The Authority shall, in broad oceanic areas opened by it designated sectors for exploration and exploitation exclusively by Contracting States.

Provided, however, that the Authority may refuse to open any part of parts of the Area pursuant to this paragraph when the available data indicates the risk of irreparable harm to a unique environment or unjustifiable interference with other uses of the Area.

CONTRACTS FOR ASSOCIATED OPERATIONS

4. On the application of any Contracting State, or State enterprise, or person natural or juridical which possesses the nationality of a Contracting State or is effectively controlled by it or its nationals, or any group of the foregoing (hereinafter called the "applicant"), the Authority may enter into a contract, joint venture or any other such form of association, for the conduct of scientific research, or for the carrying out of a general survey or exploration of the Area, or of operations relating to evaluation and exploitation of the Area including such stages as feasibility study, construction of facilities, processing, transportation and marketing (hereinafter called the "contract").

5. Every contract entered into by the Authority pursuant to paragraph 4 shall:

(a) be in strict conformity with this Convention and the rules and regulations prescribed by the Authority in accordance with the Convention;

(b) ensure direct and effective financial and administrative control by the Authority at all stages of operations through appropriate institutional arrangements entered into pursuant to this Convention.

QUALIFICATION OF APPLICANTS

6. (a) The Authority shall prescribe appropriate administrative procedures and rules and regulations for making an application pursuant to paragraph 4, and the qualifications of any applicant referred to therein. Such qualifications shall include (1) financial standing, (2) technological capability, and (3) past performance and work experience.

(b) Contracting States which apply to enter into contracts with the Authority shall be presumed to possess the qualifications specified in subparagraph (a).

(c) Each applicant shall, in addition, submit to the Authority a work programme which shall accommodate the objectives of the Authority as reflected in this Convention and the rules and regulations prescribed thereunder.

(d) Each applicant shall indicate its willingness to comply with the provisions of this Convention and the rules and regulations prescribed by the Authority, and to accept control by the Authority in accordance therewith.

RESERVATION OF AREAS FOR THE AUTHORITY

7. Each applicant with respect to activities of evaluation and exploitation shall be required to propose to the Authority two alternative areas of equivalent commercial interest for the conduct of operations under contract. The Authority shall determine one such area to be a reserved area in accordance with paragraph 8.

SELECTION OF APPLICANTS

8. (a) Upon receiving an application pursuant to paragraph 4 with respect to activities of evaluation and exploitation, the Authority shall first ascertain whether any competing application has been received for either of the two areas referred to in paragraph 7. If no such competing application has been received, the Authority shall enter into a contract with the applicant in respect of one of the two proposed areas which the Authority shall designate for the purpose provided that the applicant has completed the procedures and possesses the qualifications prescribed pursuant to paragraph 6 and, after a consideration of all relevant factors is deemed to offer the Authority the maximum financial and other benefits. The other area shall be deemed a reserved area subject to disposition by the Authority in accordance with paragraph 19.

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(b) Applicants shall be required, as a condition of continued operation under a contract, to comply with the requirements prescribed by the Authority for the training of personnel of and transfer of ocean mining and mineral processing technology to, the developing countries, particularly the land-locked among them, as well as to other countries lacking or less advanced in such technology.

(c) If the Authority receives more than one application in respect of substantially the same area and category of minerals, selection from among the applicants shall be made on a competitive basis taking into account the extent to which each applicant satisfies the requirements of paragraph 6. The Authority shall enter into a contract with the applicant which, after a consideration of all relevant factors, is deemed to offer the Authority the maximum financial and other benefits.

(d) The principles set forth in sub-paragraphs (a), (b) and (c) shall be applied mutatis mutandis in prescribing procedures, rules and regulations for the selection of applicants for contracts with respect to activities other than evaluation and exploitation, except that the provisions of paragraph 7 shall not apply thereto.

(e) When a contractor that has entered into a contract with the Authority for one or some of the stages of operations referred to in paragraph 4 has completed performance under it, he shall have priority among applicants for a contract or contracts for one or more further stages of operations with regard to the same area and resources; provided, however, that where the contractor has not carried out his obligations to the satisfaction of the Authority, such priority may be withdrawn.

(f) The number of contracts entered into by the Authority with a single Contracting State in respect of areas designated pursuant to paragraph 3(d) shall be limited in such a way that the total area open for exploration and exploitation by that State pursuant to paragraph 3(d) shall not exceed the limit specified by the Authority for each category of minerals, and shall be equal for all Contracting States.

RIGTS AND OBLIGATIONS UNDER THE CONTRACT

9. (a) Any Contracting State, or any State enterprise or person natural or juridical which possesses the nationality of a Contracting State or is effectively controlled by it or by its nationals, or any group of the foregoing which enters into a contract for

activities relating to evaluation and exploitation with the Authority pursuant to paragraph 4 (hereinafter called the "Contractor") shall, except as otherwise agreed by the Authority, be required to use its own funds, materials, equipment, skills and know-how as necessary for the conduct of operations covered by the contract, and to deposit a sum by way of guarantee of satisfactory performance under the contract.

(b) The investment and operating costs made in performance of the contract pursuant to paragraph (a) shall be determined in advance by prior agreement with the Authority and deemed to be a cost reimbursable to the Contractor out of the proceeds of operations. The Authority shall in its rules and regulations establish a schedule pursuant to which such costs will be reimbursed based on generally accepted accounting principles.

(c) The balance of the proceeds of operations pursuant to the contract after deduction of costs of the Authority and the Contractor, but without deduction on account of national taxation, shall be apportioned between the Authority and the Contractor in a manner [to be specified].

10. The Contractor shall:

(a) Transfer in accordance with the rules and regulations and the terms and conditions of the contract to the Authority at time intervals determined by the Authority all data necessary and relevant to the effective implementation of the Authority's powers and functions under this Convention in respect of the contract area. The Authority shall not disclose to third parties, without the prior consent of the Contractor, such of the transferred data as is deemed to be proprietary by the Contractor. Data which is necessary for the promulgation of rules and regulations concerning protection of the marine environment shall not be deemed to be proprietary. The Contractor shall not be obliged to disclose proprietary equipment design data to the Authority.

(b) Draw up programmes for the training of personnel, and take all such other action as may be necessary to fulfil its obligations pursuant to paragraph 8(b).

11. The Authority shall, pursuant to this Convention and the rules and regulations prescribed by the Authority, accord the Contractor the exclusive right to evaluate and/or exploit the contract area in respect of a specified category of minerals and shall ensure that subsequent Contractors in the same contract area but for a different

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category of minerals do not interfere with the operations of the first Contractor. The Contractor shall have security of tenure. Accordingly, the contract shall not be cancelled, modified, suspended or terminated, nor shall the exercise of any right under it be impaired, except for gross and persistent violations of the provisions of this Convention and the rules and regulations prescribed by the Authority thereunder, and after recourse to procedures provided under this Convention for the settlement of any dispute that may have arisen. The Authority shall not, during the continuance of a contract, enter into a contract for the same area and operations with another applicant.

RULES, REGULATIONS AND PROCEDURES

12. The Authority shall prescribe and ensure compliance by the Contractor with rules, regulations and procedures consistent with the purposes and fundamental principles of the functioning of the Authority and with these basic conditions in the following subjects:

- (1) Applications to enter into contracts
- (2) Qualifications of applicants
- (3) Selection of applicants
- (4) Progress report
- (5) Submission of data
- (6) Application fees and deposits to secure satisfactory performance
- (7) Inspection and supervision of operations
- (8) Mining standards and practices including operational safety
- (9) Prevention of interference by the Contractor with other uses of the sea and of the marine environment
- (10) Apportionment of the proceeds of operations
- (11) Direct participation of personnel of developing countries, particularly the landlocked among them and of other countries lacking or less advanced in ocean mining and mineral processing technology, and the transfer of such technology to such countries
- (12) Passing of title to minerals and processed metals from the Area
- (13) Avoiding or minimizing adverse effects on the revenues of developing countries derived from exports of the minerals and products thereof from the Area
- (14) Transfer of rights by a Contractor
- (15) Activities in reserved areas

In respect of rules and regulations for the following subjects the Authority shall uniformly apply the objective criteria set out below:

- (16) Protection of the marine environment. The Authority shall take into account in establishing rules and regulations for the protection of the marine environment the extent to which activities such as drilling, dredging, coring and excavation as well as disposal, dumping and discharge in the Area of sediment or wastes and other matters will have a substantial harmful effect on significant marine life.
- (17) Size of area. The Authority shall determine the appropriate size of areas for evaluation which shall be twice as large as those for exploitation in order to permit intensive continued survey and evaluation operations. Areas for exploitation shall be calculated to satisfy the stated production requirements of the Contractor over the term of the contract taking into account the state of the art of technology then available for ocean mining and the relevant physical characteristics of the area. Areas shall neither be smaller nor larger than are necessary to satisfy this objective. In cases where the Contractor has obtained evaluation and exploitation rights, the area shall be reduced by one-half if the Contractor proceeds to exploitation. This relinquished area may be reserved by the Authority pursuant to paragraph 19.
- (18) Duration
 - (a) General survey shall be without time limit except in the case of violations of the Authority's regulations to protect the environment in which case the Authority may prohibit the violator from conducting general survey operations for a reasonable period of time.
 - (b) Evaluation should be of sufficient duration as to permit a thorough survey of the specific area, the design and construction of mining equipment for the area, the design and construction of small and medium size processing plants for the purpose of testing mining and processing systems and a reasonable grace period to allow for sudden market fluctuations before commercial production must begin.

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- (c) Exploitation should be of sufficient duration as to permit extraction of the resources of the area for as long as it is possible to produce the resources profitably and should include a reasonable time period for construction of commercial scale mining and processing systems during which period commercial production should not be required. The total duration of exploitation, however, should also be short enough to permit the Authority a fair opportunity to amend the terms and conditions of the contract at the time of renewal in accordance with rules and regulations which it has issued subsequent to entering into the contract. Prior to the first renewal of the contract the duration of exploitation should be related to the economic life of the mining project taking into consideration such factors as the depletion of the ore body, the useful life of mining equipment and processing facilities, and profitability.
- (19) Performance requirements. The Authority shall require that during the evaluation stage, periodic expenditures be made by the Contractor which are reasonably related to the size of the contract area and the expenditures which would be expected of a bona fide Contractor who intended to bring the area into fullscale commercial production within the time limits established by the Authority. Such required expenditures should not be established at a level which would discourage prospective operators with less costly technology than is prevalently in use. The Authority shall establish a maximum time interval after the evaluation stage is completed and the exploitation stage begins to achieve fullscale commercial production. To determine this interval, the Authority should take into consideration that construction of large-scale mining and processing systems cannot be initiated until after the termination of the evaluation stage and the commencement of the exploitation stage. Accordingly, the interval to bring an area into fullscale commercial production should take into account the time necessary for this construction after the completion of the evaluation stage and reasonable allowance should be made for unavoidable delays in the construction schedule.

Once full-scale commercial production is achieved in the exploitation stage, the Authority shall within reasonable limits and taking into consideration possible adverse market conditions for the Contractor require the Contractor to maintain a reasonable level of commercial production throughout the period of the contract.

- (20) Categories of minerals. In determining the category of mineral in which contracts should be awarded the Authority shall give primary emphasis to the following characteristics:

- (a) Resources which require the use of similar mining methods, and
- (b) Resources which can be developed simultaneously without undue interference between Contractors in the same area developing different resources.

Nothing in this paragraph shall deter the Authority from granting a contract for more than one category of mineral in the same contract area to the same applicant.

- (21) Renunciation of areas. The Contractor shall have the right at any time to renounce without penalty the whole or part of his rights in the contract area. In such cases the renounced area shall be deemed to be a reserved area and disposed of in accordance with paragraph 19.

13. The Authority shall have the right to take at any time any measures provided for under this Convention to ensure compliance with its terms, and in the performance of the control and regulatory functions assigned to it thereunder or under any contract. In particular the Authority shall have the right to inspect all facilities in the Area used in connexion with any operations carried out under a contract with the Authority.

SUSPENSION OF TERMINATION

14. A Contractor's rights in the contract area shall be suspended or terminated only after a finding by the [dispute settlement organ] that the Contractor has conducted his activities in the contract area in such a way as to result in gross and persistent violations of this Convention and rules and regulations and were not caused by circumstances beyond his control, or a finding that a Contractor has wilfully failed to comply with any decision of the [dispute settlement organ]. Lesser penalties in the nature of monetary fines may be imposed by the [dispute settlement organ] for violations which are not gross and persistent provided the penalties are proportionate to the violation.

FORCE MAJEURE

15. Non-performance or delay in performance by the Contractor or by the Authority shall be excused if and to the extent that such non-performance or delay is caused by force majeure. The party invoking force majeure may take appropriate measures including revision, suspension or termination of the contract; provided, however, that in the event of a dispute the parties shall first have recourse to the procedures for the settlement of disputes provided for in this Convention.

TRANSFER OF RIGHTS

16. The rights and obligations arising out of a contract with the Authority shall be transferred only with the consent of the Authority, and in accordance with the rules and regulations prescribed by it. The Authority shall not withhold consent to the transfer if the proposed transferee is in all respects a qualified applicant.

APPLICABLE LAW

17. The law applicable to the contract shall be solely the provisions of this Convention, the rules and regulations prescribed by the Authority, and the terms and conditions of the contract. The rights and obligations of the Authority and of the Contractor shall be valid and enforceable notwithstanding the law of any State, or any political subdivision thereof to the contrary. No contracting State may impose conditions on a Contractor that are inconsistent with the principles of this Convention. Neither the Authority nor the Contractor shall be entitled in any proceeding to assert any claim that any rule or regulation prescribed by the Authority or provision of the contract is invalid or unenforceable because of any provision of this Convention or for any other reason.

LIABILITY

18. Responsibility or liability for wrongful damage arising out of the conduct of operations by the Contractor shall lie with the Contractor. It shall be a defence in any proceeding against a Contractor that the damage was the result of an act or omission of the Authority. Similarly, any responsibility or liability for wrongful damage arising out of the exercise of the powers and functions of the Authority shall lie with the Authority. It shall be a defence in any proceeding against the Authority that the damage was a result of an act or omission of the Contractor. Liability in every case shall be for the actual amount of damage.

RESERVATION OF AREAS

19. Areas reserved by the Authority in accordance with paragraphs 7, 8, 12(17) and 12(21) above shall be explored and exploited in any manner determined by the Authority pursuant to this Convention and the rules and regulations prescribed therein with respect to such areas.

SETTLEMENT OF DISPUTES

20. Any dispute concerning the interpretation or application of this Convention, its rules and regulations or the terms and conditions of a contract and arising between the Authority and a Contracting State or any State enterprise or person natural or juridical which possesses the nationality of a Contracting State or is effectively controlled by it or its nationals, or any group of the foregoing shall on the application of either party be subject to the procedure for settlement of such disputes provided for in this Convention.